

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI**

LARRY HOLDER, et al., on behalf of	:	Case No. 1:20-cv-757
themselves and others similarly situated,	:	
	:	Judge Matthew W. McFarland
Plaintiffs,	:	
	:	
v.	:	
	:	
A&L HOME CARE AND TRAINING	:	
CENTER, LLC, et al.,	:	
	:	
Defendants.	:	

ORDER GRANTING MOTION TO STAY (Doc. 30)

Before the Court is a motion for clarification or, alternatively, motion to stay (Doc. 30). On August 4, 2021, this Court conditionally certified two collectives but also certified two issues for immediate interlocutory appeal under 28 U.S.C. § 1292(b). (Doc. 29.) That statute provides that a district judge may, under certain conditions, approve an immediate appeal of an order in a civil action. *See* § 1292(b). If “application is made to [the Court of Appeals] within ten days after the entry of the order,” then the Sixth Circuit has discretion to permit an appeal of that order. *Id.* *See also Groves v. United States*, 941 F.3d 315 (7th Cir. 2019). A party’s application for an appeal does not stay proceedings in the district court unless the district judge (or circuit judge) says otherwise. § 1292(b).

Defendants state that they intend to apply to the Sixth Circuit for interlocutory appeal under § 1292(b). They argue that an appeal would be rendered meaningless if the parties move forward with the same two-step certification process that has been certified

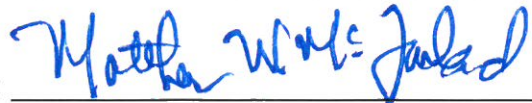
for immediate appeal.

The August 4 order did not act as a stay, as it was within the parties' discretion to decide whether to apply to the Sixth Circuit for interlocutory review or proceed with the case. But since Defendants represent that they will apply for an immediate appeal – and because proceeding with the case at the trial level risks mooted the appeal – the Court finds Defendants' motion to stay well taken. *See W. Tennessee Chapter of Associated Builders & Contractors, Inc. v. City of Memphis*, 138 F. Supp. 2d 1015, 1029 (W.D. Tenn. 2000). Accordingly, the Court orders as follows:

- (1) Defendants' Motion for Clarification or, in the Alternative, Motion to Stay is **GRANTED**. This matter shall be **STAYED** under § 1292(b) upon Defendants' filing with the Sixth Circuit in furtherance of an appeal. The Court will contact the parties to schedule a status call approximately 120 days from the date of this order.
- (2) Defendants **SHALL FILE** a notice with this Court identifying the date on which they filed the application for appeal with the Sixth Circuit.
- (3) The parties **SHALL INFORM** the Court immediately if the Sixth Circuit rejects the application for appeal.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: 
JUDGE MATTHEW W. McFARLAND